

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE: : Case No. 17-31795

BESTWALL LLC : Chapter 11

Debtor, : Charlotte, North Carolina

: Tuesday, November 7, 2017

: 2:01 p.m.

[illegible]

BESTWALL LLC, : AP 17-03105

Plaintiff, :

V. :

THOSE PARTIES LISTED ON :
APPENDIX A TO COMPLAINT AND
JOHN AND JANE DOES 1-1000, :

Defendants. :

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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LAURA TURNER BEYER,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES :

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20 ALSO PRESENT:
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TYLER L. WOOLSON
Bestwall LLC

22 ROLAND TOMFORDE
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24

25

1 APPEARANCES (via telephone):

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1	<u>EXHIBIT INDEX</u>		
2			<u>Received</u>
3	A	Woolson declaration	37
4	B	Mercer declaration	68
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 P R O C E E D I N G S

2 (Call to Order of the Court)

3 THE COURT: All right. Good afternoon.

4 We are here in the Bestwall Inc. -- excuse me --
5 Bestwall LLC matter for first day hearings. And there are a
6 slew of you.

7 So you all can take a seat.

8 And what I typically do is start by having people
9 announce their appearances. There are a lot of you, but,
10 Ms. Abel, we'll start with you.

11 MS. ABEL: Shelley Abel and Alex Kenny for the
12 Bankruptcy Administrator's Office.

13 THE COURT: Okay. All right.

14 MR. CASSADA: Good afternoon, Your Honor. I'm Garland
15 Cassada, Robinson, Bradshaw & Hinson. We are special, asbestos
16 claims estimation counsel and local chapter 11 counsel for the
17 debtor --

18 THE COURT: Okay.

19 MR. CASSADA: -- Bestwall.

20 I'd also like to introduce Greg Gordon of the Jones
21 Day firm.

22 THE COURT: All right. Welcome.

23 MR. GORDON: Good afternoon, Your Honor.

24 MR. CASSADA: Excuse me. Jones Day is serving as the
25 lead chapter 11 counsel and I believe late last week you signed

1 orders admitting Mr. Gordon and his colleague *pro hac vice*.

2 THE COURT: I believe I did.

3 Welcome to Charlotte. Welcome to the other courtroom
4 in Charlotte, Mr. Gordon.

5 MR. GORDON: Thank you, Your Honor. Appreciate that.

6 THE COURT: You're welcome.

7 Anybody else who would wish to announce an appearance
8 today?

9 MR. MILLER: Afternoon, Your Honor. Jack Miller,
10 Rayburn Cooper & Durham. I'm here on behalf of non-debtor
11 affiliate, Georgia-Pacific LLC, which is a Delaware limited
12 liability company.

13 THE COURT: Okay.

14 MR. MILLER: I'd like to also introduce to the Court
15 co-counsel, Mark Goodman and Natasha Labovitz. They're here
16 from New York, Debevoise & Plimpton.

17 THE COURT: Okay. Welcome.

18 MR. GOODMAN: Thank you, Your Honor.

19 THE COURT: Uh-huh (indicating an affirmative
20 response).

21 Ms. Simpson, welcome back.

22 MS. SIMPSON: Thank you.

23 I'm Linda Simpson and I'm appearing as local counsel
24 for two asbestos claimants' law firms, the firm of Simmons
25 Hanly Conroy LLC and the firm of Kazen, McClain, Slatterley

1 [sic] & Greenwood.

2 I'd also like to introduce Natalie Ramsey and Mark
3 Fink is on the telephone. They are lead counsel for these
4 firms. Ms. Ramsey and Mr. Fink are partners with the law firm
5 of Montgomery, McCracken, Walker & Rhoads in their Delaware
6 office. *Pro hac vice* applications were filed today for both of
7 them.

8 THE COURT: Right. And I, I don't believe I have
9 signed those orders, but we will get those signed. We signed a
10 lot of orders in this case.

11 All right. Are there any other parties who would wish
12 to announce an appearance?

13 (No response)

14 THE COURT: I know, I understand that there are a lot
15 of folks on the phone and in that regard and with respect to
16 telephonic appearances, probably what, what I will do going
17 forward is basically adopt the same procedures that Judge
18 Whitley has used in the Garlock case and in the Kaiser case.
19 And as I understand it, unless parties have filed notices of
20 appearance with the Court or otherwise been admitted to
21 practice *pro hac*, you will not be allowed to appear
22 telephonically, barring the exception of today. Procedurally,
23 what you need to do is send an e-mail to my judicial assistant,
24 Sara Durkin, if you wish to appear telephonically -- and that's
25 assuming that you have otherwise noticed an appearance in the

1 case or been admitted to practice *pro hac* -- and she will give
2 you consent and, through me, and she will give you the
3 appropriate dial-in information so that you can appear
4 telephonically.

5 Let me also say just for purposes of the record I am
6 not a fan of folks making argument over the phone. It just
7 doesn't work very well.

8 So if you wish to participate in this case in a
9 meaningful way, I would suggest that you get yourself here and
10 make yourself available to the Court and argue in person.

11 Having said that, I also know that there will be
12 emergencies that arise. So we can make exceptions for that,
13 certainly, but that will be an exception and not the rule.

14 And the risk of any difficulty, you know, oftentimes
15 we have parties who appear telephonically and we simply hear
16 every third word. And so if you appear over the phone, then
17 you bear the risk of any technical difficulties or problems,
18 okay?

19 All right. I don't believe that there are any other
20 sort of administrative matters that we need to resolve.

21 So with that, we will start with the first day
22 motions.

23 Mr. Gordon.

24 MR. GORDON: Thank you, Your Honor. Again, Greg
25 Gordon, Jones Day, on behalf of the debtor here, Bestwall LLC.

1 I'd like to start, if I could, Your Honor, with a
2 couple of sets of introduction.

3 THE COURT: Uh-huh (indicating an affirmative
4 response).

5 MR. GORDON: And, following that, with Your Honor's
6 permission, I'd like to make kind of an opening statement to
7 provide Your, the Court with a bit of an overview drawn,
8 largely, from the informational brief we filed in the first day
9 declaration, but just try to pull that together in a summary
10 fashion for the Court.

11 THE COURT: Okay. That sounds good.

12 MR. GORDON: By way of introductions, Your Honor,
13 colleagues of mine who weren't introduced before, Jeff Ellman
14 to my left.

15 THE COURT: All right.

16 MR. ELLMAN: Good afternoon.

17 THE COURT: Welcome.

18 MR. GORDON: Dan Prieto to his left.

19 MR. PRIETO: Good afternoon, Your Honor.

20 MR. GORDON: And then Amanda Rush sitting along the
21 side.

22 THE COURT: Welcome.

23 MR. GORDON: And then the other introductions are from
24 the client, from Bestwall, Your Honor, if I could. Mr. Joel
25 Mercer. He's --

1 MR. MERCER: Good afternoon, Your Honor.

2 THE COURT: Welcome. Good afternoon.

3 MR. GORDON: He is the Chief Legal Officer of

4 Bestwall.

5 THE COURT: Okay.

6 MR. GORDON: And then Tyler Woolson to his left.

7 MR. WOOLSON: Good afternoon.

8 THE COURT: Good afternoon.

9 MR. GORDON: He is a Vice President and Chief

10 Restructuring Officer of Bestwall.

11 THE COURT: Okay. All right. Thank you.

12 MR. GORDON: Thank you, Your Honor.

13 And if I might, before I start, I took some of the,
14 the demonstratives out of the informational brief and just put
15 them in a little book for Your Honor.

16 THE COURT: Okay.

17 MR. GORDON: I thought that would be helpful. If I
18 could approach.

19 THE COURT: Yes, sir.

20 MR. GORDON: I have a bunch of extra copies for people
21 in the courtroom as well.

22 THE COURT: Yes, sir.

23 MR. GORDON: May I approach, Your Honor?

24 THE COURT: Yes, sir.

25 (Documents handed to the Court and counsel)

1 THE COURT: Thank you.

2 If we could pass one over here to our law clerk,
3 please.

4 MR. GORDON: Oh, I'm sorry.

5 THE COURT: That's okay.

6 MR. GORDON: One of the more important ones. There
7 are more up here, too.

8 THE COURT: So as to not put them on the spot, but two
9 folks who you will -- my, my permanent law clerk is Chris
10 Badger, who also served Judge Hodges in the Garlock case. So
11 to the extent that you need to send questions and e-mail,
12 Mr. Badger will be the person to whom you should direct those
13 e-mails.

14 So I suspect that you all will get to become very
15 familiar with Mr. Badger.

16 MR. GORDON: Thank you, Your Honor.

17 THE COURT: Uh-huh (indicating an affirmative
18 response).

19 MR. GORDON: So, Your Honor, I'll probably begin by
20 stating the obvious here, which is the fact that we're here in
21 this court because of asbestos claims. Bestwall and its
22 predecessors have been burdened by asbestos litigation for over
23 40 years and it's projected that these claims will continue to
24 be filed against Bestwall for another 30 more; in fact, through
25 at least 2050. Since the filing of the first case, which

1 occurred in 1979, Bestwall and its predecessors have been
2 subject to 430,000 asbestos-related personal injury lawsuits.
3 Over that time period, Bestwall and its predecessors have spent
4 approximately \$2.9 billion defending and paying claims. As of
5 the petition date, Your Honor, Bestwall had approximately
6 64,000 pending claims. Those claims are pending, literally, in
7 virtually every state across the country as well as certain
8 territories of the United States and of those 64,000 claims,
9 about 22,000 are active.

10 Our objective, Your Honor, in this case and the reason
11 we filed in this court is that we're seeking the confirmation
12 of a Section 524(g) plan of reorganization that comprehensively
13 and fairly and equitably resolves all these claims, all the
14 pending claims that I just referred to, as well as all future
15 claims that may be filed against the company. And I can say
16 with a lot of assurance, Your Honor, that this company is
17 committed to dedicating the resources necessary to getting to
18 that resolution and to do so as soon as we possibly can.

19 I'd like to begin, Your Honor, if I could, with a bit
20 of background about Bestwall, itself. Bestwall is a North
21 Carolina limited liability company. It was formed this past
22 July, July 31, 2017, and its formation occurred as part of an
23 internal corporate restructuring of an entity then known as
24 Georgia-Pacific Limited Liability Company and for ease of
25 reference, I'll refer to it as Old GP. And I, I'm going to

1 come back to that corporate restructuring because I think it's
2 important for the Court and the parties to understand how that
3 worked.

4 But before I do that, what I'd like to do is just talk
5 about the debtor itself, along with its assets and liabilities
6 and its organizational structure.

7 THE COURT: Uh-huh (indicating an affirmative
8 response).

9 MR. GORDON: So, Your Honor, if you'll open your, the
10 book I handed up, I'm actually going to use the Demonstrative
11 Exhibit No. 1, which is a fairly simplistic corporate chart,
12 but obviously, Bestwall here is highlighted in yellow. It has,
13 basically, four principal assets. It owns land, it owns land
14 in Mt. Holly, North Carolina. That land is leased to a non-
15 debtor affiliate that operates a plant. It has cash. As of
16 the petition date, that amount of cash was about, was
17 approximately \$20.7 million. It owns all of the equity
18 interest in an entity called GP Industrial Plasters LLC.
19 That's the entity underneath and I'm going to talk about that
20 in a bit. And it also has a funding agreement with, with the
21 New Georgia-Pacific LLC, which I'll refer to as New GP. That's
22 the entity that sits to the right of, of the Bestwall entity.
23 So there's a funding agreement that runs from George-Pacific
24 LLC, or New GP, to Bestwall.

25 Now coming back, Your Honor, to GP Industrial Plasters

1 LLC, you'll see it has two subsidiaries, Blue Rapids Railway
2 Company, Industrial Plasters Canada ULC. Those entities
3 together have a plaster business. They develop, manufacture,
4 sell, and distribute gypsum, gypsum plaster, and this plaster
5 is used for all kinds of different purposes, floor
6 underlayment, industrial plaster, metal casting plaster, even
7 dental plaster, medical plaster, arts and center, arts and
8 crafts plaster, and so on.

9 GP Industrial Plasters owns or leases three
10 facilities. It owns a facility in Blue Rapids, Kansas and it
11 leases facilities in Las Vegas, Nevada and Camden, New Jersey.
12 You'll be happy to know that Blue Rapids Railway operates a
13 short-line railroad. So we've got a railroad aspect to this,
14 but it's just at the Blue Rapids facility.

15 And then the plaster, the Canada entity, Industrial
16 Plasters Canada ULC, holds certain assets for that business not
17 currently in use and they principally comprise a, a gypsum mine
18 in Canada.

19 The business of the plaster company, this unit of,
20 this group of three, is profitable. They're projected to have
21 approximately 14 million in EBITDA in 2018 and approximately 18
22 million in EBITDA for the years thereafter. And the value of
23 that, just to make a note of that, we believe, is
24 approximately, of this business, is approximately \$145 million,
25 including cash on hand, which is about 13 million.

1 Then I wanted to talk a bit about the funding
2 agreement that I referred to before. So this is an important
3 agreement to understand. It's probably somewhat unusual,
4 probably an agreement maybe Your Honor hasn't seen before and
5 others here haven't seen before. I have to say, I haven't seen
6 an agreement quite like this before, either.

7 So again, this is between Bestwall and New GP. It's
8 not a loan agreement and the reason it's not a loan agreement
9 is there's not an obligation on the part of Bestwall to repay
10 funds that would be provided to Bestwall by New GP. By its
11 terms, it requires New GP to provide funding to pay all of
12 Bestwall's costs and expenses, to the extent Bestwall isn't
13 able to do so from the distributions it receives from the
14 plaster business. In addition, it also obligates New GP to
15 fund amounts necessary to pay asbestos claims, including
16 specifically for the funding of a Section 524(g) trust. But
17 again, only to the extent that Bestwall's assets are
18 insufficient to provide the necessary funding for the trust.

19 So again, it's important to understand not a loan
20 agreement. It's a funding agreement, but it's a committed
21 obligation by New GP to pay expenses, to the extent the debtor
22 can't pay them, and to pay the asbestos claims, to the extent
23 that the debtor can't pay those with its assets.

24 So those are the, the primary assets of Bestwall, four
25 categories that I've described.

1 On the liability side, really only one category of
2 assets -- I'm sorry -- one category of liabilities and those
3 are the asbestos claims. And if I'm doing my job right, I'll
4 be referring to them as the Bestwall Asbestos Claims. So that,
5 I can provide some clarity on that.

6 So just to go back in summary with respect to
7 Bestwall, it owns a business. It owns the equity in a business
8 with a value of approximately 145 million; has approximately 21
9 million in cash; it has the land in Mt. Holly, North Carolina;
10 and it has the funding agreement with New GP.

11 Now if I could, Your Honor, I'd like to walk through,
12 to some extent, the corporate restructuring back on July 31.
13 And again, this is the transaction that led to the formation of
14 Bestwall LLC.

15 So if we go back to July 31 and, in fact, maybe go a
16 few days before July 31, at that point in time all of the
17 assets and liabilities that today sit in both Bestwall and New
18 GP were at that time in one entity, which, confusingly, was
19 also called GP, but I'm going to refer to it as Old GP.

20 So on July 31, 2017, that former Georgia-Pacific
21 entity, again Old GP, underwent a corporate restructuring. It
22 did so for two primary reasons. One reason was it did it to
23 separate and then align its business of managing and defending
24 asbestos claims with the assets and the team of people related
25 to or responsible for those claims.

1 So just to break that down a bit, what was separated out
2 were the asbestos claims and just to pause there for a second.
3 By this time the management of the Best, of the asbestos
4 claims, at least the way I think about it, was a business in
5 and of itself. We're talking about the management and the
6 defense of literally tens of thousands of claims all across the
7 United States. In point of fact, it was one of the larger
8 businesses in terms of cash flow of, of all the Georgia-Pacific
9 businesses at the time.

10 So that, those liabilities were separated. Those
11 claims were separated. The team that was largely responsible
12 for the management and defense of those claims, really
13 Mr. Mercer and the people who work for him, they were
14 separated. They've been seconded to, to Bestwall. So that was
15 the one aspect of it.

16 And then the other aspect of it, I referred to certain
17 assets that were associated with the liabilities. The
18 liabilities derive -- and I'm going to come back to this --
19 from an acquisition that Old GP did back in 1965. It acquired
20 a company at that time known as Bestwall Gypsum. That company
21 had certain businesses and assets. Among them were plaster
22 assets. The three sites that I referred Your Honor to that one
23 is leased, or the two that are leased, the one that is owned,
24 those basically are legacy assets from the old Bestwall
25 Company. So they would put into this Bestwall operation as a

1 subsidiary that is part of this parent and its subsidiaries.

2 I do want Your Honor to know that there are other
3 legacy Bestwall assets that were not moved, principally some
4 assets or some plants that relate to a wallboard business, but
5 it simply wasn't viewed by the company as feasible to separate
6 those assets because they had been so carefully and fully
7 integrated into other wallboard operations at the company.

8 But the effort was to move the claims, separate the
9 claims, put them with the people who managed those claims, and
10 then include in that as well assets that were associated with
11 those liabilities, again assets that were the legacy assets
12 that came along at the time of the Bestwall Gypsum acquisition.

13 So that was Reason No. 1.

14 Reason No. 2 was just to provide additional
15 optionality regarding the filing of the chapter 11 as an
16 alternative to deal with the asbestos liabilities. And when I
17 say that, what I'm referring to, in particular, is the option
18 to file the chapter 11 in a way that didn't expose the entire
19 Georgia-Pacific enterprise, all its other assets and operations
20 that have nothing to do with the asbestos liabilities, not to
21 expose those to the bankruptcy filing as well.

22 So that was the second, second reason for the
23 corporate restructuring.

24 That said, though, I want to emphasize that although
25 those were, obviously, very important and they were the primary

1 reasons, a key object -- and, of course, the key objective was
2 not to subject these other assets to the bankruptcy.

3 At the same time, the key, another key objection [sic]
4 was to ensure that the financial wherewithal of these other
5 assets and operations -- stated another way, the paying power
6 generated by those other assets and operations -- would
7 nonetheless remain available to Bestwall, if needed, to resolve
8 these asbestos liabilities and that objective was ultimately
9 realized in the form of the funding agreement that I described
10 to Your Honor earlier.

11 Now in terms of the, the restructuring itself, if Your
12 Honor had a chance to review Mr. Woolson's declaration, it went
13 through in some detail the steps. I'm just going to describe
14 the essence of it because I think if you understand the
15 essence, you know, the steps are just kind, that's the A to B
16 to C that gets you to the ultimate restructuring.

17 So the essence of the restructuring was that Old GP
18 effected what's called a divisional merger under Texas law.
19 And the way I think about it is it's the opposite of what you
20 think a merger normally is. Instead of companies combining,
21 the company can literally split apart. But the way it can be
22 done under the Texas statute is that existing entity ceases to
23 exist and in its place, two new entities are created. One of
24 those entities was Bestwall and Bestwall as part of that
25 restructuring, again, received the, or was allocated the

1 asbestos claims and it was allocated the assets that I
2 described earlier.

3 Then the other entity that was created was what I'm
4 referring now to as New GP --

5 THE COURT: Uh-huh (indicating an affirmative
6 response).

7 MR. GORDON: -- which was allocated all the other
8 liabilities and allocated all the other assets and operations.

9 So you have Bestwall on the one hand solely
10 responsible for asbestos claims. You have New GP on the other
11 solely responsible for all the other liabilities of the former
12 Old GP and then the assets were split, as I described earlier.

13 But again, another key to understanding this -- it's
14 not totally intuitive, at least to me -- is the old entity is
15 gone and in its place now there are two new entities and both
16 were created as of July 31, 2017. And again, I just want to
17 underscore this. In terms of New GP, it received the other
18 operations and assets and became solely responsible for the
19 other liabilities and, very importantly, it became the payor
20 under the funding agreement. So it became the payor; Bestwall,
21 the payee.

22 So, Your Honor, one other comment I'll make about the
23 corporate chart is obviously you have Bestwall to the left, you
24 have Georgia-Pacific LLC or New GP to the right. You have the
25 funding agreement running from New GP to Bestwall. There are

1 some other agreements as well.

2 THE COURT: Uh-huh (indicating an affirmative
3 response).

4 MR. GORDON: And we've already filed some motions with
5 the Court. They're not up for today. But, for example,
6 there's a services agreement that runs from New GP to Bestwall
7 pursuant to which it provides a variety of administrative-type
8 services, legal, tax, accounting, services like that. There's
9 also the -- excuse me, Your Honor -- secondment agreement that
10 I referred to earlier by which Mr. Mercer and his team had been
11 seconded. And when I say "seconded," maybe that's a bit of an
12 unusual word. I can't say it's one I, I usually normally in my
13 vocabulary. But basically, Your Honor, they've been assigned
14 full time to the Bestwall entity and they're, they're basically
15 dedicating all their time to assisting with the, you know,
16 continuing to do their work with respect to asbestos claims and
17 then this bankruptcy case.

18 THE COURT: I'm embarrassed to admit it, but my clerk
19 and I thought that was a typo when we first came across that
20 word, but we, we quickly figured out that it was not.

21 MR. GORDON: Well, it's certainly possible we, we
22 misspelled it and if we did, certainly not my fault.

23 THE COURT: It, it was not. It was a term with which
24 we were not familiar, admittedly, so.

25 MR. GORDON: Well, my colleagues will bear

1 responsibility for that, but --

2 THE COURT: It's not misspelled.

3 MR. GORDON: Okay, good.

4 Your Honor, now I'd like to, if I could, refer or talk
5 a bit about the events that have led to us being in this court
6 today.

7 So as I indicated, the filing has, has really been
8 precipitated by these continuing flood of asbestos claims that
9 the company's been receiving over a substantial period of time.
10 They date back, as I indicated, to this acquisition in 1965 of
11 Old, Old Bestwall or Bestwall Gypsum Company.

12 And just to provide Your Honor with a bit of detail
13 about Bestwall Gypsum Company, Old Bestwall manufactured
14 wallboard. That product didn't contain any asbestos and it
15 also manufactured joint compound products and those products
16 did contain limited amounts of chrysotile asbestos, I think
17 about 3 to 5 percent by weight. The products came in two
18 forms. They came in a powder, which you would mix with water,
19 or they became, or they came ready mix. And I'm not a
20 handyperson at all. My wife, if she were here to tell you, she
21 would say I can't do anything around the house and I would have
22 a hard time arguing against that. But, in any event, I
23 understand that joint compound's a paste and could be used to,
24 basically, fill the seams on sections of wallboard, maybe cover
25 nail holes, things like that. The purpose is to smooth the

1 surface, but it can then be painted or otherwise decorated.

2 So it acquired this company, manufactured these
3 products with small amounts of chrysotile asbestos in 1965.
4 That company was merged into Old GP and Old GP continued to
5 manufacture those products with asbestos for about another 11
6 or 12 years. All the asbestos was taken out of those products
7 by 1977.

8 Now it is significant -- I'll just go back over
9 this -- at least from our perspective, that the asbestos that
10 was contained in these products was chrysotile asbestos.
11 Because, in our view, there isn't any dispute in the science,
12 scientific or medical community that it's a substantially
13 lower, has a substantially lower potency than other forms of
14 asbestos and, in particular, you may have heard this term,
15 amphiboles, or amphibole asbestos. And, in fact, Judge Hodges
16 in the Garlock case acknowledged that chrysotile asbestos had a
17 lower potency than other forms of asbestos.

18 It's also important to note, I think, Your Honor, that
19 the joint compound as a whole -- and I'm talking about across
20 all manufacture -- only represented about 1-1/2 percent of all
21 asbestos-containing products manufactured in the US in the 20th
22 century and that would mean that our percentage of asbestos-
23 containing products out in the, in the marketplace would have
24 been well under 1 percent. It really was -- these joint
25 compound products were really dwarfed by other types of

1 asbestos-containing products; for example, insulation,
2 construction materials, and the like, and those materials
3 largely included amphibole asbestos rather than chrysotile.

4 So from our perspective, Your Honor, this has created
5 a very significant anomaly in a way. We had limited amounts of
6 asbestos that's far less potent than the other forms of
7 asbestos. We have a miniscule percentage of all the asbestos-
8 containing products out there in the marketplace, yet in the
9 years leading to the filing Bestwall and Old GP were being sued
10 in about 70 to 80 percent of all mesothelioma cases. It's
11 really hard for us to reconcile that.

12 Then, Your Honor, the other thing that I think is
13 important to understand about the years leading up to the
14 filing is what happened in terms of the litigation, how the
15 litigation developed over the years. Because there's a sea
16 change that occurred around 1999.

17 For the first 20 years of the litigation, from about
18 1979 to 1999, Old GP, really, was an insignificant defendant.
19 It paid minimal amounts of defense and indemnity costs and
20 during that time there are other, there are a number of other
21 primary defendants, really these big insulation-type
22 manufacturers, for the most part, or big manufacturers of
23 amphibole products. They were the primary defendants. They
24 were paying, by far, the bulk of the money.

25 But, Your Honor, if you turn again to the

1 demonstratives and if you look at the second one, which is very
2 cleverly made to look like a wave, there was literally a wave
3 of filings of the primary defendants that occurred. This
4 really begins in 2000, actually began in '99, but the biggest
5 years were 2000, 2001, and 2002. You'll see on this exhibit
6 the primary defendants are represented in red. You can see
7 Babcock and Wilcox, Pittsburgh Corning, Owens Corning,
8 Armstrong World, Grace, USG, Turner and Newall, and so on. And
9 it's significant that -- so you can see this really big wave
10 that peaked in 2002 and then it started to recede a bit in the
11 years thereafter.

12 What's very interesting, if you look at that -- well,
13 first of all, let me, let me comment.

14 As a result of that, as those -- those defendants
15 filed bankruptcy. They exited the tort system. The plaintiffs
16 increasingly turned to the other defendants, who, up until that
17 time, were minor or insignificant, and began really focusing on
18 them, targeting them. And, of course, Old GP was one of them.
19 From our perspective, we went through a situation where our
20 products were identified very rarely as causes of asbestos
21 disease, the products that were identified extremely often.
22 And that, that sea change in the product IDs or the
23 identifications or the naming of our company basically tracks
24 this asbestos wave.

25 So if you go back again and look at the demonstrative,

1 you look at Demonstrative Exhibit No. 3. I mean, this reflects
2 the filings that the company was subject to from the years, for
3 the years 1990 to 2016, but look at the years 1990 through 1999
4 and then 2000 and then look what happens from 2001 forward.
5 This kind of mirrors exactly the bankruptcy wave, the filing
6 wave that I showed Your Honor earlier.

7 And then if you go to Demonstrative Exhibit No. 4, a
8 similar chart, this is the number of meso claims paid by
9 payment year, same, well, same group of years, although this
10 one includes part of 2017. But again, very similar experience,
11 very low numbers through 1999, picking up in 2000 and then just
12 beginning to skyrocket in 2001, and then staying high
13 throughout.

14 And this phenomenon happened even though the large
15 majority of companies that had filed for bankruptcy had
16 successful bankruptcies in the sense that they reorganized.
17 They established Section 524(g) trusts and they funded those
18 trusts with billions of dollars and those trusts are continuing
19 to operate today and they're paying billions of dollars in, in
20 claims today.

21 Just to provide some additional numbers, in the first
22 20 years of the litigation our, our defense and indemnity costs
23 averaged about six million a year. They were about a hundred
24 million in total for the first 20 years of the litigation. In
25 the last 18 years, they've averaged approximately \$160 million

1 per year, more than 25 times more than what they were before
2 the wave.

3 And, and I should go one more chart here, Your Honor,
4 Demonstrative Exhibit No. 5. This shows the, the difference in
5 the average payments made per claim for the years. Again,
6 first 20 years average \$20,000. Last 17 years or so, over
7 \$120,000. Again, just the sea, sea change. Additionally -- so
8 that's the history over a long period of time, but things have
9 become even more concerning in the last three years, maybe the
10 last two years and ten months.

11 In 2015, our total defense and indemnity spend hit
12 approximately \$184 million; in 2016, that spend hit
13 approximately \$174 million; and in 2017, just through the first
14 ten months prior to the filing, that spend hit \$200 million.
15 So our experience has been of even greater concern in the last
16 three years. And, and, you know, bottom line, Your Honor, just
17 looking at that, you know, we feel strongly that the number and
18 the magnitude of the claims are wildly disproportionate to what
19 our true or actual liability could be.

20 Now in that regard -- and I'm not going to spend a lot
21 of time on this, but we did cover it in the informational brief
22 and so I, I do want to say some things about it today -- we
23 think the fact that we're the subject of so many claims and are
24 being forced to pay significantly higher settlements is
25 directly the result of what I would call shortcomings in the

1 tort system and, in fact, some abuses in the tort system. And
2 there's really two, in particular, that we pointed out in the
3 informational brief.

4 One is just the truly inexplicable number of
5 plaintiffs who are now and have been recently identifying
6 Bestwall products as substantially contributing factors to
7 their disease. You know, for more than 20 years, you know,
8 plaintiffs were basically identifying the products of these
9 other manufacturers -- again, big insulation manufacturers, the
10 other big companies who made amphibole products -- and not, not
11 identifying products like those that were manufactured by
12 Bestwall or Old GP. After the bankruptcy wave, that completely
13 changed to the point that now so many additional people have
14 come forward. In our view, it's far more than ever could
15 really have been exposed in view of the low chrysotile
16 exposures of our product, which was, really, it's limited, it's
17 a limited population and really small amounts of chrysotile.
18 And again, I come back to what I said before. We're talking
19 about a product that represented less than 1 percent of
20 asbestos-containing products in the marketplace, yet today
21 we're sued in 70 to 80 percent of mesothelioma cases.

22 So that's No. 1.

23 And then the No. 2 item of misconduct that we pointed
24 out was what appears to be repeated failures by plaintiffs to
25 disclose exposures to asbestos-containing products for which

1 trusts are now responsible. So whereas before they were
2 saying, "I was exposed to W. R. Grace products," or,
3 "Pittsburgh Corning products," or, "USG products," when they're
4 questioned by us or when they were questioned by us they denied
5 that and have said, instead, "No, we were exposed to your
6 products," maybe one or two other either joint compound
7 products or other chrysotile products.

8 And as we took a look at this in preparing for this
9 filing, we did have available to us the record in Garlock that
10 was made publicly available, the trial record, and we learned,
11 first of all, that a number of the cases we settled were the
12 same cases that were specifically identified by Judge Hodges in
13 Garlock as having this very problem that I'm raising here.

14 And, and so we found that we had an overlap. In terms
15 of the cases we settled, they were the same, they're at least
16 the same plants. And then we were able to take that record
17 further and actually investigate whether or not it appeared
18 that Bestwall or Old GP was, in fact, subject to the same
19 practice and we found that it was, in many cases. And we
20 included examples in our informational brief which we just
21 documented as Plaintiffs 1 through 5, but all of them had a
22 very similar fact pattern, at least in my view, in that in
23 testimony in connection with, with Georgia-Pacific's -- I'm
24 sorry -- with Bestwall's claims they indicated that their
25 exposures were to Bestwall products, other joint compounds

1 potentially, or other chrysotile, denied exposure to,
2 basically, the products of any of these companies that had gone
3 through bankruptcy and established trusts, and we were able to
4 determine through investigation, primarily from the Garlock
5 record, that although those statements were made to Bestwall or
6 Old GP prior to the time a settlement was reached -- and, in
7 point of fact, those same individuals were, in fact, either
8 before, during, or later filing trust claims against the trusts
9 or, you know, basically, you know, pursuing claims against
10 other parties, claiming exposure to other parties' products
11 that they had denied in connection with fact-finding efforts
12 conducted by Old GP or Bestwall.

13 So, Your Honor, I'd like to move on from that to just
14 talk a little, provide a little bit more information about the
15 burden of the litigation and how I wind up with what we hope to
16 accomplish in the case, if I'm remembering my outline
17 correctly.

18 So you can imagine that managing and defending this
19 significant number of cases is, is a significant burden. The
20 company -- well, when I say "the company," I should say
21 Bestwall and formerly Old GP -- have retained approximately 50
22 outside defense firms to help with the defense of the claims.
23 From 2012 to 2016, Old GP paid, on average, about 660 attorneys
24 and paralegals to help with the defense and management of the
25 claims. In aggregate, they billed, on average, per year about

1 150,000 hours. In addition to those counsel, Old GP also
2 retained nearly 40 experts, plus it needed data management
3 assistance as well as discovery vendors as well. In 2016, the
4 defense costs alone exceeded 40 million just to manage these
5 cases. And, of course, this is managing the cases in a way you
6 have to manage them in the sense there's so many of them, you
7 can't try them all because that literally would mean, that
8 would costs billions of dollars to do that.

9 So they're largely managed to the point where they can
10 be settled. A number of them are settled through what we call
11 group settlements. It's an agreement with a law firm where a
12 bunch of claims are grouped together and, and settled all at
13 once or settled as part of a package. And so, largely, Your
14 Honor, what we're forced to do because we can't possibly try
15 all the proof of claims we are settling in this way to
16 basically avoid the defense costs. And Your Honor may know
17 from the Garlock case that Judge Hodges recognized that fact in
18 connection with settlements there and ultimately, between that
19 fact and the fact that he saw this misconduct that I talked
20 about earlier, he concluded that the settlement history of a
21 company was not, did not bear any relationship to its actual
22 legal liability.

23 So, Your Honor, the decision to file came after
24 careful consideration by the Board of Managers of Bestwall of
25 its experience and Old GP's experience in the tort system both

1 in the past, in the present, and what was anticipated to happen
2 in the future, which is tens of thousands of additional claims
3 that I indicated earlier at least through 2050. They were the
4 ones, the Board, that made the decision to file and pursue a
5 Section 524(g) asbestos trust. You know, I think,
6 fundamentally, it's because the litigation's been a significant
7 burden for years, it's been anticipated to continue for years
8 more, and the concern is as well that the future may very well
9 be considerably worse or significantly worse because the wave
10 that we talked about, I think in Exhibit No. 2, could occur
11 again. And we're in a similar situation where there are
12 primary defendants paying the bulk of the money in the tort
13 system and if that occurs again, then the, the defense and
14 indemnity costs of Bestwall could have increased or could
15 increase exponentially in the future.

16 And in that regard, Your Honor, I should note that
17 it's our understanding that every other major joint compound
18 manufacturer has filed for bankruptcy or, or, maybe putting it
19 another way, we believe that Bestwall may be the last major
20 joint compound manufacturer that was in the tort system that
21 has now filed for bankruptcy.

22 So, Your Honor, in terms of this proceeding itself, as
23 I indicated earlier, our goal is to negotiate, obtain approval
24 of, and ultimately consummate a chapter 11 plan of
25 reorganization that would create and fund a trust to pay

1 current and future asbestos claims. That trust, we would
2 contemplate, would treat all claims equitably, or, maybe said
3 better, uniformly. That trust would process and pay claims
4 pursuant to trust distribution procedures that would have been
5 approved by the Court, or would be approved by the Court. And
6 importantly, the goal is to pay all the claims in full. We
7 believe with the funding agreement, we have the capability of
8 doing that. That plan would also -- we would also contemplate
9 that plan would provide for the issuance of a channeling
10 injunction that would permanently protect Bestwall, its
11 affiliates, and others from Bestwall Asbestos Claims, both
12 current and future.

13 Again, I want Your Honor to know that we're prepared
14 to work with the court-appointed asbestos claimants' committee
15 and future claimants' representative to reach this goal of a,
16 of a Section 524(g) plan of organization. We're prepared to
17 provide information at the appropriate time to those parties.
18 We're prepared to commence negotiations with those parties as
19 soon as they're ready to go.

20 We're also prepared, Your Honor, that if negotiations
21 for whatever reasons don't prove fruitful, to ask Your Honor to
22 estimate the liability or the asbestos claims for purposes of
23 confirmation to assist us to ultimately get to a resolution.
24 And like in Garlock, we would ask for or seek a, an estimation
25 of our actual liability as opposed to just an estimation of

1 what our settlement experience might have been, had we chosen
2 to remain in the tort system for decades in the future.

3 But, Your Honor, whether we ultimately proceed with or
4 without an estimation, our ultimate objective is a consensual
5 plan. Our objective is to get to a consensual plan that's
6 supported by both the asbestos claimants' committee and the
7 future claimants' representative. And, of course, we recognize
8 and acknowledge that Section 524(g) requires a 75 percent plus
9 vote of the current asbestos claimants. We believe, Your
10 Honor, that a Section 524(g) plan of reorganization is the best
11 outcome for all stakeholders. We believe it will achieve,
12 enable all parties to achieve a fair, equitable, and
13 comprehensive resolution of all current and future asbestos
14 claims. If we can reach that result, it will end what we view
15 is inefficient, costly, and uncertain litigation, both for the
16 benefit of us as well as for the benefit of claimants as well.
17 We submit that chapter 11 is the only option available to
18 achieve a permanent comprehensive result of this nature.

19 And, Your Honor, we look forward to working with the
20 claimants and their representatives and also working with Your
21 Honor to achieving that result.

22 Thank you.

23 THE COURT: Thank you. And I guess on behalf of the
24 Court let me say that we and the court staff are here to help
25 you and the ACC and the FCR and the BA work together or

1 litigate or do whatever we need to do to meet that goal, so.

2 MR. GORDON: Appreciate it.

3 THE COURT: Uh-huh (indicating an affirmative
4 response). All right.

5 MR. GORDON: Now, if I could, with Your Honor's
6 permission, I'd like to turn the lack of podium, I guess, over
7 to Mr. Ellman, who would like to address the first day motions
8 and then we would take up the adversary proceeding and the
9 request for the entry of a temporary restraining order last,
10 again with Your Honor's permission.

11 THE COURT: That sounds like a fine way to proceed.

12 And I'm going to have some -- it's going to take me
13 some time to learn your, your names.

14 So tell me your name, again, Mr. --

15 MR. ELLMAN: Certainly, Your Honor. So for the
16 record, Jeffrey Ellman from Jones Day on behalf of the debtor.

17 THE COURT: Okay. All right.

18 MR. ELLMAN: And I will stand over here, if that's all
19 right with Your Honor.

20 THE COURT: Sure.

21 MR. ELLMAN: So I can organize.

22 THE COURT: And if you'll back up just a little bit --

23 MR. ELLMAN: Yes.

24 THE COURT: -- Mr. Gordon, so that -- I'm sorry --
25 Mr. Ellman, so that that microphone can pick up your voice.

1 MR. ELLMAN: I'll turn this a little bit if that's
2 appropriate.

3 THE COURT: I don't know if you can.

4 MR. ELLMAN: We'll get the hang of this, eventually.

5 THE COURT: That's okay.

6 MR. ELLMAN: So, Your Honor, we do start this process
7 with our initial first day motions. We have four motions on
8 the calendar in the main case today. Three of those are
9 administrative motions. One is a little more operational,
10 which is cash management. I believe Your Honor was provided
11 with a binder that has all the papers.

12 THE COURT: I've got it right here.

13 MR. ELLMAN: And so we're going to kind of follow the
14 order that's in that binder.

15 And before I get into that, I did want to make a note
16 for the record about service. We did serve all these papers to
17 the best of our ability. In fact, the service in this case was
18 broader than you might normally have because we did have the,
19 the TRO proceeding that will follow this and because we were
20 giving notice to such a broad group the notice of this hearing
21 went to virtually, you know, all the, the law firms that
22 represent the plaintiffs' bar in this case.

23 So very, a very wide notice, including notice of this
24 hearing. All the affidavits of service are on the, on the
25 docket. I think, if I'm correct, I think it's Docket Nos. 52

1 and 53 for the service of the motions and 55 and 56 with
2 respect to the service of the notice of the hearing. So I
3 wanted to get that on the record as well.

4 THE COURT: Okay. And I did note the affidavits of
5 service --

6 MR. ELLMAN: Yes.

7 THE COURT: -- on the docket. Thank you.

8 MR. ELLMAN: Now Mr. Gordon mentioned this, but we, we
9 have in support of the filing and all of our first day papers a
10 declaration from, from Mr. Woolson, Tyler Woolson, who is here
11 in the courtroom, and is the Vice President and Chief
12 Restructuring Officer of the debtor. And because it does
13 support the various motions, I would move that into evidence at
14 the outset. And he is here if, if there are questions of the
15 parties.

16 THE COURT: Is there any objection to the declaration
17 of Mr. Woolson being admitted?

18 (No response)

19 THE COURT: Then we will admit that into evidence.

20 (Debtor's Exhibit A admitted in evidence)

21 MR. ELLMAN: Thank you, Your Honor.

22 So with that, I will move on to the actual motions.
23 The first one is in your binder, I believe at Tab 4, and this
24 is the application to retain Donlin, Recano & Company as
25 claims, noticing, and balloting agent. And I'm not going to

1 really refer to the papers in great detail, but if you have it
2 there and want to refer to those, certainly fine.

3 Given the size of the case, we believe that it's
4 appropriate -- we have tens of thousands of creditors -- that
5 the administrative burdens that would be placed on the Court
6 and the clerk's office and the, frankly, the debtors in this
7 case, that having a claims and noticing agent is appropriate
8 and, and necessary. It's typical in a large case, as Your
9 Honor, I'm sure, is aware, to relieve the Court of those
10 administrative duties, in particular the clerk's office, to
11 expedite noticing, to streamline the claims process, and
12 promote efficiency.

13 So we have filed this under the authority in 28 U.S.C.
14 156(c), Section 156(c), and that section of the, of the
15 judicial Code provides, empowers the Court to authorize the use
16 of outside agents and facilities for administrative purposes.
17 We believe that provides the authority for this motion. Also,
18 Rule 2002 allows the Court to direct other parties to give
19 notice. We think there's ample authority for the relief.

20 In the papers you have there in front of you, Your
21 Honor, we did include the engagement agreement. It's dated
22 October 19th and it's attached as Exhibit A. We, we had a
23 process of getting five proposals for the claims and noticing
24 agent. This was, in our view, the best proposal on the
25 economics and by a party that we consider to be very qualified.

1 The services that will be provided, I'm not going to
2 go into all of them. It's described in detail in the
3 engagement agreement and I think, in particular, if you look at
4 Paragraph 11 of the application. I think it goes on for maybe
5 three pages of bullets of things that they will do, but just to
6 note a few: serving notices in the case, maintaining the
7 service list in the case, which we'll talk about, maintaining
8 the claims register and they will do that with the supervision
9 and control of the clerk's office, and then coordinate with the
10 clerk's office on things like claims transfers and, and the
11 like. There'll be that coordination back and forth. They
12 maintain a case website, which has already been initiated,
13 which is, which is live and available today. And they'll do
14 ballot certification and, when the case is over, they will
15 transfer all the claims to the Federal Archives. And this is a
16 well-established process that has been used in many cases.

17 So those are kind of the overview of the services.
18 There are others in more detail in the papers, but those are
19 the overview.

20 As far as compensation, Schedule A to the engagement
21 agreement includes their compensation structure. They, they
22 get paid hourly for certain services of the individuals at
23 Donlin. There are fees for certain services like printing and
24 there are storage fees for electronic storage. And those are
25 all laid out.

1 The other thing that happens, as you might imagine
2 with large mailings there will be significant costs at times.
3 That will be passed along to the debtor. So they will,
4 obviously, pass along the expenses.

5 As far as the process for paying those fees, these
6 will be administrative claims in the case. There are not going
7 to be applications, but they will provide a copy of their
8 invoices not only to the debtors, but also to the Bankruptcy
9 Administrator. So there will be the ability to, to see those
10 bills. And again, the debtor will pay all the costs, which is
11 what is required by 28 U.S.C. 156(c). The debtor pays the
12 costs.

13 The only other thing I'll mention about the payment of
14 fees is they do have a retainer prepetition that is subject to
15 reconciliation. The order will allow them, if signed, to
16 reconcile the pre-petition retainer.

17 I'd also note, Your Honor, that, that they did file a
18 disinterestedness declaration or certification. That's Exhibit
19 B to the motion. That was signed by Roland Tomforde, who's the
20 Chief Operating Officer of Donlin who's here in the courtroom
21 right there (indicating). And he's, he's available if Your
22 Honor has questions.

23 There's significant precedent for this type of, of
24 retention, including this District in the Kaiser case and
25 Garlock, and, most recently, in Portraits Innovations, which we

1 cited. And so we would ask for it to be approved.

2 The order itself -- actually, I have a -- if I could
3 approach, Your Honor, I have a clipped package here. These are
4 the four orders I am going to present. These are the
5 blacklines. I will tell you in advance that some of them are
6 pretty underwhelming because there weren't very many changes,
7 but I did want to provide it.

8 So the first one in the stack should be the, the
9 Donlin order and all we did, really, was add the docket number.
10 So --

11 THE COURT: Okay.

12 MR. ELLMAN: --there's really, just to show you
13 there's no change.

14 The one thing I do want to point out about the order,
15 in particular, other than answering questions about it, I think
16 it's Paragraph 15. You will see -- this is in all the
17 orders -- although this is not an ex parte order, we do have
18 the language that's consistent with the Local Rule 9013-1(f)
19 that gives parties 14 days to move for reconsideration and we,
20 we just put that in all the orders. We understand that's
21 consistent with local practice.

22 THE COURT: Okay.

23 MR. ELLMAN: And so unless you have questions, Your
24 Honor, we'd ask for the, the application to be approved.

25 THE COURT: Are there any objections? I didn't note

1 any objections --

2 MR. ELLMAN: I'm not aware of any, Your Honor.

3 THE COURT: -- on the docket.

4 All right. I will approve the debtor's application
5 for an order authorizing the retention of Donlin, Recano &
6 Company as the claims, noticing, and ballot agent.

7 I did have a question. I understand that -- and I
8 think this may have been addressed -- but the sort of
9 claimants' matrix had been provided to the Information
10 Technology people with our court and they, while they have
11 uploaded it, it's apparently creating havoc in CM-ECF, given
12 the number of claimants who are on that list. I think it
13 exceeded 200,000 claimants.

14 So my question to you is, in light of approving the
15 retention of Donlin, Recano & Company, is it necessary for us
16 to try to work around that, or can we just take that off, the
17 creditors' matrix, in other words?

18 MR. ELLMAN: In our view, with the approval of the
19 claims and noticing agent, they will become responsible for
20 that list.

21 THE COURT: That's what I heard you say.

22 MR. ELLMAN: Unless the Court feels compelled that it
23 needs to have the list for other reasons, the point, one of the
24 points of this application is to empower Donlin to act in this
25 capacity.

1 THE COURT: Okay.

2 MR. ELLMAN: And they obviously have the list and
3 they're able to, you know, to address it through noticing and,
4 and the like.

5 THE COURT: All right.

6 And I understand that there's a PDF of that claimants'
7 matrix on the docket and I think there was also some concern
8 that something might be auto docketed and somebody might try to
9 serve it by BNC, which would create quite a bill for the
10 bankruptcy court.

11 So I think it would be our great preference to just
12 turn that off and get those out of the matrix.

13 MR. ELLMAN: That, that makes sense to me, Your Honor.

14 THE COURT: Okay.

15 MR. ELLMAN: As I mentioned, the point of this is to
16 empower the claims agent to be paid by the debtor, which is
17 what the statute requires.

18 THE COURT: All right.

19 MR. ELLMAN: We agree with that

20 THE COURT: Then given your approval and with the
21 approval of this application, I think that's what I will
22 instruct the IT folks to do --

23 MR. ELLMAN: Thank you, Your Honor.

24 THE COURT: -- as soon as this hearing is over, okay?

25 MR. ELLMAN: That makes sense. Thank you.

1 THE COURT: Uh-huh (indicating an affirmative
2 response).

3 MR. ELLMAN: Okay. So we'll move on to Tab 5, which
4 is a motion to approve the filing of the top asbestos law firm
5 list, certain notice procedures, and the case commencement
6 notice. And so there are those three basic kinds of relief. I
7 was going to go through each one of them a little bit.

8 First, we're seeking relief on the, on the typical top
9 20 unsecured creditor list, which is required by Rule 1007(d),
10 as in dog. As the Court is well aware, it requires you to file
11 the top 20 list, the list of the largest unsecured creditors,
12 which is used, primarily, by the Bankruptcy Administrator to
13 form a committee. And here, in this case, what we have,
14 really, are personal injury claimants, asbestos personal injury
15 claimants. That's our creditor body.

16 And as Mr. Gordon said, the idea of the case, the
17 point of the case, is to move forward towards a 524(g)
18 restructuring and to do that, we believe what will be appointed
19 will be a, an official committee of asbestos claimants
20 consisting of the law firms representing those plaintiffs. And
21 we understand the process, in fact, is well underway. The
22 questionnaires have gone out from the Bankruptcy
23 Administrator's Office and there should be a committee in the
24 near term.

25 So with that in mind, what we had proposed and what we

1 actually filed with our petition was a list of the top 25
2 firms, law firms, with the most significant representations of
3 asbestos claimants. And we did this based on the volume of
4 cases, the scope of payments we make, and related factors. We
5 tried to make sure that we had a list that covered, you know,
6 was representative. It covered all the types of claims that
7 parties make, which, primarily, means different kinds of
8 diseases, mesothelioma, lung cancer, etc.

9 And so we're seeking authority to file that list in
10 lieu of the top 20 list, which would not have much on it. And
11 this was done in Kaiser Gypsum. This is not -- this has been
12 done in other asbestos cases and we think it's appropriate.

13 The second thing we're asking for in this motion has
14 to do with notice procedures for asbestos claimants. And under
15 Section 105(a) and Bankruptcy Rule 2002(m) the Court has the
16 authority to regulate the, the nature of notice. And here, the
17 request is really very simple. It's we would like the
18 authority to serve not the claimants themselves who are
19 individuals, but the law firms who represent them, to the
20 extent they're represented by counsel. If they're pro se,
21 they'll, that's different. But if they're represented by
22 counsel, we want the authority to serve counsel only. We think
23 it's consistent with what the law requires, consistent with our
24 responsibilities under the Professional Rules. That's how,
25 historically, Bestwall's already communicated with, with these

1 parties. In fact, as we point out in the papers, we don't
2 really have good addresses with individuals and it would be
3 very difficult to, to try to find them with no assurance they
4 would be accurate.

5 So, in our view, the, the better form of notice, the
6 more appropriate form of notice legally is to serve the law
7 firms, which is what we've been doing so far in this case, and
8 we'd ask the Court to approve that relief, as has been done,
9 again, in, in Kaiser Gypsum and in Garlock and other similar
10 asbestos cases.

11 And then last, Your Honor, the third thing this motion
12 asks for is approval of the case commencement notice. That's
13 attached to the motion as Exhibit A. We already have an order
14 from Your Honor -- it's Docket No. 21 -- that suspended the
15 entry of the automatic case --

16 THE COURT: Uh-huh (indicating an affirmative
17 response).

18 MR. ELLMAN: -- commencement notice on the official
19 form so we could be here today and ask to use a different form.

20 Now what we've proposed in that exhibit is based on
21 Official Form 309F. It has, it's been customized for this
22 case, but it has the information, I believe, that that form has
23 on it, plus a little bit of additional information and it's
24 customized for this case, including the fact that we have no
25 bar date. So it mentions that. It, it does talk about our,

1 you know, the next motion I'm going to present, which is the
2 case management procedures that we, assuming the Court enters
3 them, that we have those so people know about those.

4 But, for the most part, it is an updated and
5 customized version of the official form. We've talked to the
6 Bankruptcy Administrator about this form. She was, found it
7 acceptable and once we have the Section 341 meeting date and
8 time and place, we will insert that. And, of course, subject
9 to your Court, Your Honor approving the motion, we will be in a
10 position to serve that within five business days.

11 And again, I did hand up a, a blackline, which I
12 think, in this case, we added the docket number and we realized
13 we had not referenced the first day declaration. So you'll see
14 an addition on Page 2 of a reference to that. But beyond that,
15 it's the same order that we presented with the motion.

16 And with --

17 THE COURT: Anything further?

18 MR. ELLMAN: That's, that's all, Your Honor.

19 THE COURT: Let me ask Ms. Abel if she wants to weigh
20 in on this motion so it does --

21 MS. ABEL: This is just as good a point as any, not to
22 hijack the debtor's presentation, but I just wanted to address
23 a point of procedure on the formation of the committee.

24 THE COURT: Uh-huh (indicating an affirmative
25 response).

1 MS. ABEL: My anticipation -- we are having a meeting
2 at the conclusion of this hearing to begin the process of
3 forming that committee, or at least my recommendation for that
4 committee, and we plan to file a motion with the Court tomorrow
5 that would present our recommendation for your review. And I
6 understand from talking with your office that we would schedule
7 that for hearing on September 15th, I mean -- sorry -- November
8 15th, at 9:30.

9 So that is, for purposes of the record, for those of
10 you are in attendance, that that is the, the game plan.

11 And otherwise, I don't believe I have anything to add
12 to the --

13 THE COURT: Okay..

14 MS. ABEL: -- to the motion.

15 THE COURT: And otherwise, no objection?

16 MS. ABEL: Correct, Your Honor.

17 THE COURT: Okay.

18 MS. ABEL: Thank you.

19 THE COURT: And I have set aside Wednesday, November
20 15th, at 9:30, for a hearing on that motion, to the extent
21 that, that one is necessary.

22 So mark that date on your calendars, if you need to do
23 that.

24 And otherwise, it appears to me that it is appropriate
25 to grant the debtor's motion for an order authorizing it to

1 file the list of the top law firms, approving certain notice
2 procedures, approving the form and manner of notice of
3 commencement of this case.

4 And we'll look for your order in the form consistent
5 with what you've handed up.

6 MR. ELLMAN: Thank you, Your Honor. Appreciate it.

7 THE COURT: Uh-huh (indicating an affirmative
8 response).

9 MR. ELLMAN: So the third item is Tab 6 in your binder
10 and this is the motion I mentioned a second ago to approve
11 certain case management procedures.

12 Again, given the size of the case, our view is that
13 these types of orders assist in the efficiency and
14 administration of the proceeding. Of course, while ensuring
15 that proper notice is given to parties and everyone's
16 substantive rights are not affected, it's, it's intended to be
17 procedural and not affect substantive rights. It's, it's
18 typical to what we have seen in cases.

19 THE COURT: Uh-huh (indicating an affirmative
20 response).

21 MR. ELLMAN: I know it's typical to some of the case
22 management orders in this jurisdiction. We have, again,
23 customized it to use the kind of pieces of other orders that
24 we've used in the past that made sense in this case, in our
25 view.

1 The authority to enter this order, again Section
2 105(a), Section 1021, which deals with the notice and hearing,
3 Bankruptcy Rule 2002(m), which I mentioned earlier about the
4 form or manner of notices. Also, Bankruptcy Rule 9036, which
5 deals with electronic transmission of service and then Local
6 Rules 1002-2, 5005-1. Again, those deal with ECF and
7 electronic filing.

8 So all those are, are relevant to the relief. I would
9 just -- I'm not going -- it's, it's a 14-page order. I'm not
10 going to go through all of it, but I thought I would highlight
11 a few things and then, obviously, answer any questions the
12 Court has.

13 So one thing it does is establish omnibus hearing
14 dates so we can consolidate proceedings in this matter on set
15 dates.

16 THE COURT: Uh-huh (indicating an affirmative
17 response).

18 MR. ELLMAN: We are going to ask in the order, at
19 least as it's drafted, to set up the first three dates -- and
20 we can come back to that -- but we have, we have blanks for
21 that. And we would file an agenda with the Court two business
22 days ahead of the hearing to assist, again, in organizing the
23 hearing. That's the first thing.

24 Second thing, motions practice. Trying to get a
25 routine and a rhythm to the case so people understand what's

1 coming and how to address it.

2 So what the order proposes and, and provides for is
3 motions, along with the initial brief, 21 days before hearing,
4 presuming an omnibus hearing; response to the initial briefing
5 7 days before the hearing; and it provides for replies on the
6 last business day at least 3 days before the hearing. And what
7 that means is for a Tuesday hearing that would mean Friday
8 would be the day you file because three days is a Saturday
9 or -- yes. I think I got that right.

10 THE COURT: Uh-huh (indicating an affirmative
11 response).

12 MR. ELLMAN: So that, that's the idea for that.

13 So that's kind of the rhythm of the motion practice.
14 It does not limit people, parties in the case, from seeking
15 shortened notice. It does not impede the ability to seek ex
16 parte orders or no-protest motions under the Local Rules.

17 THE COURT: Uh-huh (indicating an affirmative
18 response).

19 MR. ELLMAN: That's all preserved, subject to the
20 other terms of the procedures. Okay. That's --

21 The third thing it does is to create service lists for
22 the case. We've proposed a master service list, which would
23 include who we see as the major parties in the case, the debtor
24 and counsel, the Bankruptcy Administrator, counsel for New GP,
25 Mr. Gordon mentioned, claims and noticing agent, and then, once

1 they exist, counsel for the ACC and the FCR.

2 But on top of that, we expect to be serving parties
3 who file 2002 notices and, obviously, any party affected by the
4 relief, in particular, that's required to get notice, we'll
5 give notice.

6 The service list will be maintained by the claims
7 agent. It'll be maintained on their website. It'll be
8 available to everyone on request or just by going to the
9 website.

10 This procedural motion also calls for e-mail service
11 and it does that by virtue of ECF, which already contemplates
12 that. So parties could participate in that. And then people,
13 parties filing 2002 requests for notice are going to be
14 required to submit to that effectively by filing that notice or
15 certifying why they can't get e-mail service. And in our
16 experience, that works very well in cases.

17 THE COURT: Uh-huh (indicating an affirmative
18 response).

19 MR. ELLMAN: Clearly, parties who don't participate in
20 ECF don't appear in the case. If they're entitled to notice,
21 they will get paper notice.

22 THE COURT: Right.

23 MR. ELLMAN: Because that's what's available.

24 I also wanted to point out in Paragraph 16, in
25 particular, of this, of this order the large sort of all-party

1 case notices are not affected. So those will be served, like
2 the case commencement notice we talked about, through the mail
3 in the normal course. Notices about the claims bar date, if
4 there is one, notices about the plan, disclosure statement, all
5 that stuff is not affected by the procedures.

6 And I think that's -- there are other, there's other
7 things that might be interesting to the Court in the
8 procedures, but those are the ones I wanted to highlight. If,
9 if Your Honor has any questions about it, I'll be happy to
10 answer them.

11 THE COURT: I reviewed the motion and, and, and some
12 of the things were of great interest to me, but you have
13 touched on the main things that were of interest to me.

14 One thing I will tell you is with respect to the
15 omnibus hearing dates --

16 MR. ELLMAN: Uh-huh (indicating an affirmative
17 response).

18 THE COURT: -- I went ahead and looked at my calendar
19 -- and I can do this on the record today -- but I have dates
20 once a month to provide you for the remainder of 2018. Because
21 I am a planner and I just as soon go ahead and have those dates
22 plotted out.

23 MR. ELLMAN: So not just this year, but into next year
24 as well?

25 THE COURT: Right.

1 So I can give you those dates right now, if everybody
2 in the courtroom would like to know those dates. It's not that
3 many. I'll just go ahead and list them off, but would ask that
4 you go ahead and include these dates in the order. Let's see.
5 December 20, 2017, at 9:30. January 18, 2018, at 10:30. I
6 believe that's because we already have a hearing set that
7 morning, which shouldn't take too long.

8 And then going forward, all the other times would be
9 9:30, but the dates are: February 22, 2018, March 22, 2018,
10 April 19, 2018, May 24, 2018, June 21, 2018, July 27, 2018,
11 August 23, 2018, September 20, 2018, October 18, 2018, November
12 16, 2018, and December 20, 2018. That just helps me for my own
13 planning purposes.

14 So I'd like to go ahead and get those dates sort of
15 set in stone with the understanding that sometimes those dates
16 won't be necessary, we'll have hearings on shortened notice,
17 and, and otherwise. The only other -- I think most of those
18 dates are falling on a Thursday.

19 MR. ELLMAN: Okay.

20 THE COURT: And again, I am a planner. I like to
21 read. I like to have as much notice as possible.

22 The only other thing I was going to suggest is with
23 respect to filing the proposed agenda. Rather than two
24 business days, ask that that be filed three business days,
25 which would be on the Monday before those Thursday hearings.

1 So that's the only other change that I would ask be
2 made to the motion and other than that, I will grant the motion
3 as has been proposed.

4 MR. ELLMAN: Thank you, Your Honor.

5 THE COURT: Uh-huh (indicating an affirmative
6 response).

7 MR. ELLMAN: The, the only thing I would mention on
8 hearing dates, we may need, as we, again previewing a little
9 bit what we're going to be talking about today, but as we get
10 into the TRO --

11 THE COURT: Right.

12 MR. ELLMAN: -- if that is granted, we also have a
13 number of what I call second day motions, motions we filed on
14 the first day that are not scheduled today, that we could
15 schedule for December 20th, but it may make sense to have them
16 heard --

17 THE COURT: Right. And I've got a few other --

18 MR. ELLMAN: -- towards the --

19 THE COURT: -- dates in my pocket.

20 MR. ELLMAN: -- we were thinking kind of last -- okay.
21 We were thinking end of November, but we can, we can get to
22 that.

23 THE COURT: These are just sort of the omnibus hearing
24 dates.

25 MR. ELLMAN: I gotcha. Okay.

1 Well, thank you, Your Honor.

2 And then as far as, again, the blackline, I think this
3 one's fairly unexciting as well. It's, it's the same kinds of
4 changes. We will fill in the, the dates for the hearings, but
5 other than adding reference to the first day declaration, the
6 docket number, and a couple small word changes --

7 THE COURT: Okay.

8 MR. ELLMAN: -- it's the same order.

9 THE COURT: All right. We will look for that order.

10 MR. ELLMAN: All right.

11 So that takes us to the, the final of four motions,
12 which is Tab 7. This is the cash management, cash management
13 motion. And it's seeking relief under Sections 345 and
14 363(c)(1). It really has three components. I'll, I'll go
15 through the three components.

16 The first is the bank accounts. The Local Rules and
17 the standard operating order contemplate closing all pre-
18 petition bank accounts, opening new bank accounts, and that, to
19 us, would be very disruptive and burdensome. It would not help
20 us have a smooth transition to this case. And our bank
21 accounts are at Bank of America, which is, obviously, a strong
22 FDIC-insured institution. It's on the approved list here in
23 this District. And so we, we seek to maintain the same bank
24 account.

25 And the standard operating order, just as an aside,

1 has not been entered yet because we're negotiating revisions to
2 that with the Bankruptcy Administrator. Hopefully, we'll have
3 something to present that's consensual, but at this point
4 we're, we're seeking relief to allow us to continue to using
5 the bank accounts.

6 The second is our cash management system. And the
7 debtor's cash management system was established to help it and
8 its subsidiaries to manage cash and we're going to ask for that
9 system to be approved with a few changes I'm going to describe.
10 And, and this blackline order actually has some stuff in it
11 that's more interesting. So that's, that'll be worth going
12 through.

13 But it's a pretty simple system. It has three
14 accounts that collect, hold, and disburse money. And so I'm
15 going to go through just the highlights of that system. But
16 before I do that, I wanted to mention a couple of agreements
17 that are kind of important to understanding the system or that
18 impact the system.

19 One is the funding agreement Mr. Gordon already talked
20 about. It's the source of funding and that has to integrate
21 with our cash management system. It's critical to the company.

22 The second one which hasn't been mentioned yet, but is
23 attached to our motion as Exhibit B is the cash pooling
24 agreement. And this is an agreement that was entered into by
25 the debtor with certain of its subsidiaries to, to maximize the

1 efficiencies of cash pooling and managing cash among the group.

2 And if you have Demonstrative No. 1, Your Honor, that
3 Mr. Gordon used, you'll see the two companies involved are, are
4 GP Industrial Plasters, which is the one right below Bestwall,
5 and then below that the Canadian entity, Industrial Plasters
6 Canada. So those two entities are part of this cash pooling
7 agreement with Bestwall. And I, I think our motion refers to
8 them as GP Plasters and Plasters Canada.

9 So with that introduction, I'll talk about the three
10 accounts and how they work at a high level.

11 So we have a concentration account. That is the
12 central account in the system. That's where incoming cash is
13 collected and that does include the funding agreement cash.
14 When we, we get money from New GP through the funding
15 agreement, it's deposited here. And it's worth noting that
16 under the funding agreement -- and, by the way, that funding
17 agreement is attached to Mr. Woolson's declaration as Annex 2.
18 You can, you can see it there, but I think at Page 5 is the
19 best place to see this. It contemplates we'll keep \$5 million
20 of a reserve and that's so the debtor always has immediate
21 access to some cash without having to ask for the money and get
22 it to be transferred.

23 So that \$5 million sits in the concentration account
24 and any additional money we ask or seek under the funding
25 agreement that comes in sits in the concentration account.

1 Other money coming into the concentration account
2 would include dividends or distributions from the subsidiaries.
3 If they make a distribution, that becomes the estate's money.
4 Any payments under services agreements that are paid to the
5 estate, that's the estate's money. It sits in the
6 concentration account.

7 Then the third thing is the cash that is not the
8 estate's cash. It's the cash of GP Plasters and Plasters
9 Canada that through cash pooling they, they keep in the cash,
10 the concentration account to be managed by the parent. That
11 money is also in this account, but it's not the estate's money.
12 It just, it's held there.

13 And so the way that cash pooling works for GP
14 Plasters, the immediate subsidiary, they have a, an automatic
15 sweep every day of the money that's in their main account. So
16 when they get money at the end of the day, it sweeps up and it
17 ends up in the concentration account of Bestwall. Bestwall
18 accounts for every dollar. They keep strict records. If, if
19 Plasters needs money, it makes a request, which is, basically,
20 an electronic request. The money moves back down the chain to
21 be used by the subsidiary. And they can only get money that is
22 their money that happens to be in the concentration account.
23 There's no loans. There's no advances. If the subsidiary, GP
24 Plasters, needs money that isn't available in the concentration
25 account, they have a revolving line of credit with New GP.

1 So on this, on this chart to the right of Bestwall,
2 they have, they get money from here. Doesn't involve the
3 debtor. Comes directly from that.

4 And very similar for Plasters Canada, which is the,
5 the second-tier subsidiary, except it's not so automatic.
6 There's no sweep arrangement. Plasters Canada, when they have
7 extra money, excess cash, they will send it up the chain, again
8 a more manual system. It'll be held in the concentration
9 account. If they need money, they ask for it. It gets sent
10 back down. Again, no loans, no advances. And if Plasters
11 Canada needs money, they also have, you know, on this chart,
12 they have their own, you know, relationship with New GP and
13 they'd get money that way. So the only thing they get from the
14 estate is their own money.

15 So that's how the concentration account works.

16 The other thing I'll mention about the concentration
17 account it, it is not typically used for disbursements except
18 in one situation, which is wire transfers. So wire transfers
19 can leave that account. But for everything else, they have a
20 disbursement account. That's the second of their accounts.
21 That's managed by a company called Pace Claims Services LLC and
22 that pays everything out, anything that's not by wire transfer.
23 That would be all the professional fees. It all goes through
24 there. That's a zero-balance account. It doesn't hold money.
25 It doesn't keep money. If they're going to make a disbursement

1 of a hundred dollars, the hundred dollars comes in and goes
2 back out.

3 And then the last account is what we call a segregated
4 account and this is just holding money. This is \$15 million.
5 That is part of the initial funding of Bestwall and it's being
6 held to help fund the 524(g) trust. That the expected use of
7 this fund, of this money.

8 So the changes that we discussed with the Bankruptcy
9 Administrator pretty much all go to the 345 waiver and how
10 we're going to deal with the fact that if we have \$15 million
11 in the account, that's obviously well above the FDIC insurance
12 limit. And so we've agreed to do a couple of things that are,
13 when we get to the order, are reflected in the order.

14 So first thing is that segregated account. All of the
15 money in that segregated account, the \$15 million that's from
16 the initial funding of the company that we're just holding, all
17 that money is going to be invested in Treasuries, effectively
18 backed by the full faith and credit of the United States.
19 Every dollar in that account's going to be addressed through an
20 investment in, in Treasuries.

21 In the concentration account, you may recall I
22 mentioned the \$5 million of reserve money we're keeping in
23 there. We've agreed with the Bankruptcy Administrator to put
24 half of that, well, I should say, not less than half -- we
25 could put more -- but not less than at least half of that

1 money, \$2-1/2 million, also into Treasuries. Now the money
2 that will not be in Treasuries will include the subsidiaries'
3 money, the Plasters Canada and GP Plasters, not the estate's
4 money. We're not going to touch that money. It's just going
5 to stay in the account and move back and forth as needed. And
6 any -- you know, the, whatever part of the reserve we don't put
7 in there and any additional cash coming in will not go into the
8 Treasuries. It'll be sitting in that account, but they will be
9 subject to a program with Bank of America where they will
10 collateralize the amounts in excess of the FDIC limits. And
11 the order provides for an ongoing, ongoing notice process with
12 the Bankruptcy Administrator's Office to see how much the
13 balances are in there to make sure we're within the collateral
14 limits. If there's an issue, we'll address that at a later
15 time. But --

16 THE COURT: Uh-huh (indicating an affirmative
17 response).

18 MR. ELLMAN: -- for now, we believe this will be
19 sufficient to protect all the money. The Bankruptcy
20 Administrator seems satisfied with that.

21 The only other part of the, of the cash management
22 system I think worth mentioning is, as you'll see in, in the
23 order and the motion, we're asking to pay the bank fees and do
24 some sort of basic things that banks always require us to do to
25 make the system work. They know they can charge our fees.

1 They know if we tell them to pay a check that it's okay, that
2 they're not going to get in trouble.

3 And with all -- with all those -- with those changes
4 and those additional points, we ask for the system to be
5 approved, again similar to what's been done in other cases,
6 like Kaiser Gypsum, like Garlock, in this District as an
7 ordinary-course practice.

8 And then there's one last thing we're asking for in
9 this motion, a third form of relief, which is pretty simple,
10 which is not to have to put the DIP, you know, DIP designation
11 on business forms, etc., etc. And we have made one change to
12 that in consultation with the Bankruptcy Administrator's
13 Office. They're fine with us not putting DIP language on our
14 business forms and checks, but they did ask that we add to the
15 signature cards with the bank for each of the accounts the
16 clear designation debtor in possession, which we have done.
17 And that is reflected in the order as well.

18 THE COURT: Okay.

19 MR. ELLMAN: And so it might be worth just flipping
20 through the order 'cause there are a few changes in this order.
21 I can point out where they are.

22 THE COURT: Okay.

23 MR. ELLMAN: And then if you have any questions.

24 Page 2 is just docket numbers and small changes. The,
25 the real meat of it is on Page 3 --

1 THE COURT: Uh-huh (indicating an affirmative
2 response).

3 MR. ELLMAN: -- which is Paragraphs 4, 5, and 6.

4 Paragraph 4, in addition to referring to the changes
5 that are in 5 and 6, does make clear that the subsidiary cash
6 is not property of the estate. I just wanted to make sure that
7 was very clear.

8 And then Paragraphs 5 and 6 deal with the investments
9 in the Treasuries in the two different accounts. Paragraph 5
10 deals with the segregated account. Paragraph 6 deals with the
11 concentration account and it also includes the keeping, the
12 provision about keeping the Bankruptcy Administrator informed
13 on a monthly basis. That's, that's in those two paragraphs.

14 And then if you look at Paragraph 10, that includes
15 the language about the signature cards that I mentioned.

16 And the last change I wanted to mention is in
17 Paragraph 16. And in Paragraph 16 all that really does is
18 makes it, makes it clear that we can enter into the broker's
19 standard agreement, which is the thing that allows us to invest
20 in Treasuries. We've shared a copy of that with the Bankruptcy
21 Administrator. She was fine with the form of agreement. I
22 think it's just their form. I don't think we have any
23 particular ability to, to change the form, but, but it was in
24 the form acceptable to the Bankruptcy Administrator.

25 So with those changes, we'd ask for the order to be

1 entered, Your Honor.

2 THE COURT: All right. Let's let Ms. Abel speak for
3 herself. It's usually at this point.

4 MS. ABEL: Mr. Ellman has covered our issues and we've
5 worked on the form of order over the last several days. And so
6 his presentation covers our issues.

7 THE COURT: Okay.

8 With all of that, then, I will grant the debtor's
9 motion for an order approving the continued use of its bank
10 accounts, granting the waiver of the requirements of 345(b),
11 and authorizing the debtor's bank to charge certain fees and
12 other amounts consistent with the changes that you've noted on
13 the record as well as have been blacklined in the proposed
14 order that you handed up.

15 MR. ELLMAN: Thank you, Your Honor.

16 THE COURT: Thank you.

17 MR. ELLMAN: With that, I'll turn the, the lack of
18 podium back to Mr. Gordon to talk about the TRO.

19 THE COURT: All right.

20 You know, we're constructing an annex and we'll start
21 doing that, apparently, in the spring, which will give us an
22 opportunity to design new courtrooms, which there will be many
23 of, apparently. But one of the things they have talked about
24 is putting a podium in all of the courtrooms, one that can be
25 taken in and out.

1 So it may be a few years down the road, but, if you
2 wait long enough, we'll get that podium for you.

3 MR. GORDON: Well, I think the good news, Your Honor,
4 is it's hard to slouch up here.

5 THE COURT: That's right.

6 MR. GORDON: So, Your Honor, if I could, with your
7 permission, I'd like to take up our request for the entry of a
8 temporary restraining order.

9 THE COURT: Uh-huh (indicating an affirmative
10 response).

11 MR. GORDON: So, Your Honor, by this motion, at least
12 as it relates to today, we seek the entry of a temporary
13 restraining order under Section 105(a) of the Bankruptcy Code
14 extending the automatic stay to enjoin the continuation or
15 commencement by the plaintiffs. And I should pause there for a
16 second 'cause I find this very confusing.

17 When I'm using the "plaintiffs," I'm talking about the
18 plaintiffs in the asbestos cases against Bestwall.
19 Unfortunately, 'cause we had to file an adversary proceeding,
20 they're referred in the papers as "defendants," but for
21 purposes of today I think it's probably easier if I call them
22 plaintiffs.

23 THE COURT: I'm with you.

24 MR. GORDON: Okay.

25 So we seek to enjoin the continuation or commencement

1 of any action by the plaintiffs seeking to hold the debtors --
2 well, I should say, various protected parties -- liable for
3 asbestos-related claims for which the debtor, or Bestwall, is
4 responsible.

5 So again, to say that again, this is just to restrain
6 or enjoin the continuation or commencement of asbestos-related
7 claims against protected parties in situations where those
8 claims are actually claims against the Bestwall entity. And
9 again, to pause here. The protected parties list, which we've
10 appended to the motion includes the entity we referred to this
11 morning as New GP. It also refers to the entity we referred to
12 as Old GP and then we've also included in the list all domestic
13 subsidiaries of New GP. We've included the subsidiaries of
14 Bestwall and then we've included the companies up the chain
15 from Bestwall, up the ownership chain, all the way up to the
16 top, which is Koch Industries at the top, is the ultimate
17 parent company.

18 So there's two aspects of the relief. One is this
19 request for a 105(a) temporary restraining order. The other is
20 for a declaratory judgment -- this is in the alternative -- for
21 a declaratory judgment under Section 320, 362(a) determining
22 that the automatic stay applies of its own force to the
23 litigation of these claims. And again, I'm going to call them
24 Bestwall Asbestos Claims in an effort to be less confusing
25 about this.

1 In support of the motion, Your Honor, we're offering
2 the declaration of Mr. Woolson, which was put into evidence in
3 connection with Mr. Ellman's motions. We're also offering the
4 declaration of Mr. Mercer, who you met at the outset of the
5 proceeding. He's the Chief Legal Officer of the debtor.

6 So before I forget, Your Honor, I'd like to move those
7 declarations into evidence at this point in support of our
8 request for the entry of a temporary restraining order.

9 THE COURT: Any objection to the Court admitting those
10 declarations into evidence?

11 (No response)

12 THE COURT: I don't see that there are any. So I'll
13 admit both of those declarations into evidence in the adversary
14 proceeding.

15 (Debtor's Exhibits A and B admitted in evidence)

16 MR. GORDON: Thank you, Your Honor.

17 THE COURT: Uh-huh (indicating an affirmative
18 response).

19 MR. GORDON: Your Honor, the relief we're seeking has
20 been routinely granted in every, literally every asbestos
21 chapter 11 case, or at least I'm aware. It's becoming a theme
22 here this morning, but, or this afternoon, but it was granted
23 by Judge Hodges in Garlock and it was granted by, this relief
24 was granted by Judge Whitley in the Kaiser Gypsum case. And I
25 think these requests are routinely granted in chapter 11 cases

1 because, frankly, absent the relief, Your Honor, the central
2 purpose of the case, which is to achieve a comprehensive
3 resolution of all asbestos claims, would be defeated. And what
4 I mean by that is if we didn't get this relief, literally the
5 plaintiffs would have the ability to litigate and attempt to
6 recover on their claims in a piecemeal fashion outside of this
7 Court, which, in our view, completely undercuts what we're here
8 for, which is to have all these claims brought into this court,
9 comprehensively resolved here, and resolved in an equitable or
10 uniform way.

11 So again, I think, absent the relief, it's hard to
12 have, it's hard to pursue the objective that we would want to
13 pursue in this case and that's why I think these have been
14 routinely granted.

15 So I'm not going to, Your Honor, go back over the
16 facts I went over before, but, obviously, we're in a situation
17 where we have tens of thousands of pending claims. We have a
18 situation where as a result of the corporate restructuring the
19 debtor is the entity that's solely responsible for those
20 claims. We've advised, or prior to the time we filed we
21 advised the plaintiffs' bar generally in the tort litigation
22 that, in fact, this restructuring had occurred and that the
23 debtor was the entity solely responsible for the claims.
24 Nonetheless, the claims were continuing in the tort system,
25 both against the old entity, Old GP, as well as there are

1 efforts underway to amend or to sue New GP in these cases.

2 And, in fact, I think at the time we filed there are over 150
3 cases already where claims were being asserted against New GP
4 and, of course, in virtually every other case claims are
5 continuing against Old GP.

6 And I will say in that respect, Your Honor, I learned
7 something new in terms of litigation and that is there's a
8 Federal Rule of Civil Procedure, 25(c), which Your Honor may be
9 familiar with, but it basically provides, as I recall, that if
10 the interest of the defendant is transferred during a
11 proceeding, it's our, you know, an existing proceeding,
12 basically the party, the plaintiff, can continue against the
13 entity that was originally named. So litigation can continue
14 against the named party even though that named party may have
15 transferred its interest during the course of the case. And
16 there are state law equivalents, I think, in virtually every
17 state court, or at least in many of them that provide the same
18 thing.

19 So it's not unusual that the cases would proceed
20 against the old entity and, in fact, we didn't resist that,
21 frankly, in the litigation when the efforts were continuing in
22 that regard.

23 We believe, Your Honor, the automatic stay applies to
24 all the protected parties, including Old GP and New GP. But
25 nonetheless, we're asking the Court for the relief today either

1 through the TRO or a declaratory judgment because we believe,
2 Your Honor, that we need clear guidance to both the plaintiffs
3 and to the state courts that all efforts to pursue Bestwall
4 Asbestos Claims, whether against the debtor, Old GP, New GP,
5 any of these other affiliates. All those efforts, all those
6 claims would be stayed.

7 So, Your Honor, there's two principal bases on which
8 we seek the relief. The first, as I indicated, is pursuant to
9 Section 105(a) of the Bankruptcy Code. We cite in our papers
10 the A. H. Robins case, which has a discussion about 105. It
11 recognized that courts have broad authority under Section 105,
12 as it said, "to enjoin parties other than the bankrupt from
13 commencing or continuing the litigation." It also found that
14 the injunction as to third-party litigation is appropriate for
15 "the failure to enjoin would affect the bankruptcy estate and
16 would adversely or detrimentally influence and pressure the
17 debtor through those third parties."

18 We think that's exactly what would happen here. As I
19 indicated earlier, if the relief were not granted, our ability
20 to achieve our objective in this case, the comprehensive
21 resolution of all claims, would be utterly thwarted and we
22 believe as well, Your Honor -- and you'll see this in the
23 Mercer declaration -- that the debtor would be distracted
24 having to participate in these cases. It would feel pressure
25 to defend these claims in other courts across the country.

1 Your Honor, the -- it -- the consideration of the
2 traditional injunction factors, the four factors, in our view,
3 clearly demonstrates our entitlement to a temporary restraining
4 order.

5 Factor No. 1 is the reasonable likelihood of
6 successful reorganization. We are obviously at the very outset
7 of the case. Of course, we feel very strongly that we'll be
8 successful. You probably wouldn't be surprised by that, but we
9 do think at this point there's reasons to be optimistic about
10 getting to a successful result. First of all, Your Honor, I, I
11 think the debtor has the exact array of issues for which
12 Section 524(g) was specifically designed and it was designed
13 for exactly this kind of case, a company who's beset by, you
14 know, literally tens of thousands of claims with a long future
15 in sight in terms of the continuation of those claims.

16 In addition, we have an entity that we believe -- and
17 I think it was made clear, hopefully, through my recitation of
18 the assets of Bestwall -- that it clearly has the financial
19 wherewithal to fund a trust, or it has the sources available to
20 fund the trust. It's got its own assets, its own business,
21 plus it has, obviously, the funding agreement as well.

22 Moreover, Your Honor, I think there's reasons to be
23 optimistic because many other similarly situated companies have
24 filed chapter 11 to establish a Section 524(g) trust. All of
25 these companies were in similar circumstances. Many of them, I

1 think, had fewer claims, probably, than this company. Some
2 probably had more, but in many, many of those cases I think the
3 large majority of those companies were successful in confirming
4 524(g) plans of reorganization and establishing a trust for the
5 payment of asbestos claims.

6 So I think the first factor we can clearly satisfy.

7 The second factor is an imminent risk of irreparable
8 harm. I'd say here, Your Honor, this risk is significant. We
9 pointed out in the papers -- and I think it's again in the
10 Mercer declaration -- that there's a contractual obligation on
11 the part of the debtor to indemnify New GP against Bestwall
12 Asbestos Claims. That obligation was undertaken as part of the
13 divisional merger that I described to Your Honor earlier.

14 We think, Your Honor, it's also likely that there are
15 common law obligations that the debtor would have to other
16 affiliates if those affiliates were also sued on Bestwall
17 Asbestos Claims. And remember, these would be affiliates that
18 never manufactured or sold a Bestwall asbestos-containing
19 product. The only entity that has that liability is, is
20 Bestwall.

21 So, Your Honor, because we have these indemnity
22 obligations a judgment against a protected party would, would
23 basically have the effect of fixing the claim against the
24 debtor. Because there, if you take a claim that's unliquidated
25 or disputed, it will be turned into a fixed claim that would

1 then be asserted against the estate by virtue of the
2 indemnification obligation. And when you think about that,
3 Your Honor, it really means the debtor is, effectively, the
4 real party defendant in those cases and if the stay weren't in
5 place, in effect, the benefits of the automatic stay would be
6 eliminated from the standpoint of Bestwall.

7 In addition, Your Honor, we tried to point out that
8 allowing these claims to proceed in other courts against these
9 protected parties would create collateral estoppel and res
10 judicata risks, but also create risks of evidentiary prejudice.
11 There could be fact findings made in those cases that might
12 ultimately be binding on the debtor.

13 Further, Your Honor, as I think I alluded to earlier,
14 we have a significant concern about the diversion of personnel
15 that we think are key to this process. We believe because of
16 the potential impact of this litigation, if this litigation
17 were allowed to proceed against the protected parties, the
18 debtor would have no choice but to participate in the
19 litigation. That means, among other things, formulating
20 defense strategies, defending depositions, producing documents,
21 preparing witnesses, and all other types of litigation-related
22 tasks. Mr. Mercer and his team would be required to spend,
23 potentially, a significant portion of their time managing and
24 defending these claims that are proceeding in other courts
25 around the country. And, you know, as we pointed out again in

1 the papers, his team was consumed by the defense and management
2 of these claims prior to filing and if, if the door is allowed
3 open here, we believe that that's going to occur again as we
4 move forward and that will harm our ability to do what we need
5 to do in this case, which is to ultimately reach a 524(g)
6 resolution.

7 Further, Your Honor, we believe that the irreparable
8 harm to the debtor substantially outweighs any prejudice to the
9 defendants. First of all, Your Honor, the, the claims against
10 the debtor are already stayed. So we already have, the bulk of
11 the claims would be stayed, anyway. In addition, Your Honor,
12 we would submit that it's very certain that the claims against
13 Old GP are stayed as well because, if you think about it, Your
14 Honor, although lawsuits are continuing against Old GP, it
15 doesn't exist any longer and, therefore, those lawsuits could
16 only have one purpose, which is to establish liability against
17 Bestwall. And so we think the stay already applies there.

18 So, in fact, there's already a stay in place for the
19 large majority of claims and so we're already seeking -- all
20 we're doing is seeking to expand that to make certain that
21 nobody's out in front of anyone else, that everyone's in the
22 same place, that ultimately these claims can be treated in an
23 equitable and uniform manner.

24 The other thing I would, that we tried to point out in
25 the papers, Your Honor, that although some plaintiffs may be

1 delayed -- you know, there may be trials upcoming in the near
2 term. In their efforts to recover from the debtor, typically
3 these cases involve multiple defendants. So we didn't want
4 Your Honor to at least understand that notwithstanding a delay
5 here, they would still have the ability to pursue other
6 defendants in the tort system. They would still have the
7 ability to pursue bankruptcy trusts, to the extent they have
8 claims against those trusts. The stay would just be limited to
9 claims against Bestwall or, you know, claims related to, claims
10 against other parties related to the Bestwall liability.

11 Further, Your Honor, we would submit, you know, based
12 on a long time, a long history of, of experience, that the
13 litigation in the tort system is, in and of itself,
14 inefficient. It's uncertain. It does, in many cases, take
15 considerable time and, of course, we're, we're striving to get
16 to the end here with a trust that will process and pay claims
17 pursuant to trust distribution procedures that are typically
18 put together by the representatives for the claimants. And
19 those will, of course, cover the claims of future claimants who
20 haven't even filed claims yet. So there won't be any delay
21 with respect to them.

22 Moreover, Your Honor, the litigation against the
23 protected parties poses the risk that the holders of current
24 claims will receive recoveries -- I kind of covered this before
25 -- but will receive recoveries different from what the

1 remainder of the claimants would ultimately receive under the
2 trust distribution procedures in a trust. And again, part of
3 the idea here -- and I think it's fundamental to bankruptcy,
4 generally -- is to achieve a resolution that fairly and
5 uniformly treats all claimants who are similarly situated and
6 that would be undermined, I think, if the stay were not in
7 place.

8 The other thing I'd just point out on this, in
9 balancing the relative harms, you know, the injunction's only
10 temporary. The TRO, in particular, is only temporary. It's
11 only, maybe, 14 or 28 days, depending on what, or somewhere in
12 between, depending on what Your Honor rules, if we get to that
13 point. But it only halts the litigation until the point we get
14 to a chapter 11 plan. It doesn't cut it off, altogether. It
15 doesn't eliminate a source of funding. The source of funding
16 is there. It's just a question of how these claims ultimately
17 get resolved and what way will they be processed and paid at
18 the end of the day pursuant to a resolution reached with the
19 parties.

20 So we would submit, Your Honor, although there will
21 be, invariably, some delay to certain claimants, that delay to
22 some claimants will be far outweighed by the prejudice to us
23 if, in fact, we don't really have a case in the sense that,
24 although we're trying to comprehensively address claims here,
25 at the same time we have to defend claims elsewhere.

1 And, Your Honor, I said it before, but I'll say it
2 again, but I think it's relevant here. We are committed to
3 moving as fast as we can in this case. You know, we recognize
4 that in many cases it takes a while, but, hopefully, here, and
5 we're going to do our best to try to get to a resolution as
6 fast as we possibly, possibly can.

7 So again, we think we prevail on the third factor.

8 And then the fourth, Your Honor, is that the relief
9 further the public interest in ensuring a successful
10 reorganization. Again, I think this goes back to what I said
11 before. Purposes of the case is to get to a comprehensive
12 resolution. That purpose would be in severe jeopardy if, in
13 fact, we couldn't address all the claims here, but, instead,
14 have to go outside of this court.

15 So, Your Honor, in short, I think it, we believe it's
16 very clear that all four injunction factors would support the
17 entry of a temporary restraining order to the extent requested
18 in the motion.

19 And then, just briefly, Your Honor, alternatively,
20 we're asking Your Honor to consider entering a declaratory
21 judgment that the automatic stay applies of its own force to
22 prohibit prosecution of Bestwall Asbestos Claims against the
23 protected parties. I've already talked about Old GP. I think
24 it's clear because it doesn't exist anymore. The claims
25 against Old GP are stayed because there can't be any other

1 purpose for pursuing those claims except to pursue a claim
2 against Bestwall. And then as to the others, we think, Your
3 Honor, it's, it's clear, or at least there's a very good
4 argument that the claims are stayed because the types of claims
5 that would be asserted against those protected parties will be
6 property of the estate.

7 And we laid this argument out in the brief, but when
8 you think about the types of claims that would likely be
9 asserted in order to impose the liability on a party that
10 didn't manufacture or sell Bestwall asbestos-containing
11 products, you're talking about alter-ego claims, which have
12 been found to be property of the estate. You're talking about
13 successor liability claims that are found to be, have been
14 found to be property of the estate. You're talking about
15 fraudulent transfer claims that have been found to be property
16 of the estate. And in the case of fraudulent transfer claims,
17 a number of those have already been filed, were already filed
18 in the tort system against New GP before this case was
19 initiated.

20 And I'd also point out in the case of fraudulent
21 transfer claims I suppose you could argue whether those are
22 property of the estate, but whether they are or they're not I
23 think it is clear that it's the debtor that has the standing to
24 bring those claims, anyway. The individual creditors don't
25 have the standing during a bankruptcy to pursue fraudulent

1 transfer claims against another party.

2 So we think for that reason that the automatic stay,
3 there is a, there is a strong basis to find that the automatic
4 stay applies of its own force.

5 In addition, the one other thing I'll say about the
6 automatic stay, we've got the A. H. Robins case as well and the
7 A. H. Robins case, although, ultimately, I think a 105(a) case,
8 has a number of statements in there that suggest, I think, a
9 view of the Fourth Circuit that, in fact, the stay would apply
10 in situations like this. The court did talk about the stay
11 applying in a situation where a third party had an absolute
12 indemnity from the debtor, very similar to what we have here.
13 In fact, I think the court said, "To refuse the application of
14 a statutory stay in that case would defeat the very purpose and
15 intent of the statute."

16 So I think there's a basis there as well under the,
17 just the language in Owens Corn, language under A. H. Robins --
18 it's been a long day. At least I was in the asbestos world. I
19 could have come up with something a lot worse than that.

20 So, Your Honor, I think, ultimately, at the end of the
21 day, whether Your Honor relies on the Court's broad 105 power
22 or whether you conclude that the automatic stay applies of its
23 own accord, we would submit that the relief requested should be
24 granted and it should be granted, primarily, because, if it's
25 not, we're going to have a hard time even getting out of the

1 starting gate in terms of what our ultimate objective is, which
2 is to achieve a total resolution of all the claims.

3 And then finally, Your Honor, I'd just say with
4 respect to the temporary restraining order the need for this
5 relief is immediate, given the number of claims we have,
6 literally with 22,000 active cases. Activity's occurring on a
7 daily basis in the tort system. We have hearings set almost
8 daily, answer deadlines daily, discovery deadlines, and the
9 like. So there is an immediate need for the relief.

10 And also, I think, Your Honor, it's clear that, again,
11 we would be compelled, the debtor would be, feel compelled to
12 actively monitor and participate in these claims if, in fact,
13 that relief were not granted.

14 And then lastly, Your Honor, I just wanted to point
15 out the notice -- Mr. Ellman alluded to this -- but we did give
16 notice to all the law firms of which we're aware, literally the
17 whole list of law firms. We did it by overnight mail and we
18 served it twice 'cause we served the papers initially and then
19 once we had the order approving the expedited request for a
20 hearing, we served it again.

21 So we believe we've had, even though it's a very short
22 time period, we believe we've had very fulsome notice under the
23 circumstances.

24 So, Your Honor, we would request that you enter the
25 temporary restraining order that we've asked for.

1 THE COURT: With respect to the entry of a temporary
2 restraining order, I don't know if you want to go ahead and
3 talk about a continued hearing on -- and I think consistent
4 with, frankly, what Judge Hodges and Judge Whitley did in the
5 Garlock case and the Kaiser case, I'll grant the debtor's
6 motion for a TRO -- but with respect to a continued hearing on
7 a motion for a preliminary injunction, what were your thoughts
8 about that?

9 MR. GORDON: Well, in the papers we actually ask you
10 to consider going beyond the 14 days.

11 THE COURT: Right.

12 MR. GORDON: And we have the right to request it for
13 good cause. To us, the, the principal concern there is that
14 the committee should be in place and ideally, the future
15 claimants' representative should be in place. Because,
16 obviously, Your Honor will want to hear their views with
17 respect to this relief. It's very important to the overall
18 case.

19 And so we were proposing to, to give us 28 days to
20 make sure not only is the committee in place, but it's retained
21 professionals and is ready to go. And that might also give us
22 enough time to have a future claimants' representative in place
23 with counsel as well.

24 Otherwise, though, you know, we can work with that,
25 Your Honor. We, we just can't really have a gap. We need to

1 have the relief and, you know, we can take the hearing again
2 whenever appropriate. But we thought more time might be
3 helpful to the plaintiffs.

4 THE COURT: Okay. And, and I agree.

5 And I, and I think the other sort of cause for
6 extending the TRO beyond the 14 days is just the fact of the
7 time of year that this case has been filed and the shortage of
8 hearing dates and special settings we already have.

9 MR. GORDON: Okay.

10 THE COURT: So in that regard, as I told Mr. Ellman, I
11 had dates in my back pocket. And December 5th, I think, is 28
12 days and so would go ahead and I think it will be appropriate
13 to have the hearing on the motion for a preliminary injunction
14 on December 5th, at 9:30.

15 MR. GORDON: All right.

16 Your Honor, one other thing, if I could, I should
17 mention is that we've had conversations today with
18 Ms. Ramsey -- and I'm sure she will speak for herself at some
19 point here -- but she requested certain changes be made to the
20 form of order itself. And primarily, she raised concerns about
21 proposed fact findings that, that we had in the order for fear
22 that those might become binding at a hearing on a preliminary
23 injunction. That wasn't the intent, but we're certainly
24 prepared to accept her, her changes and, and eliminate some of
25 those findings.

1 So I do have a proposed form of order that --

2 THE COURT: Okay.

3 MR. GORDON: -- I can provide at the appropriate time
4 that has the redline.

5 THE COURT: Okay. All right.

6 Ms. Ramsey.

7 MS. RAMSEY: Thank you, Your Honor. Natalie Ramsey
8 for the law firms of Simmons Hanly Conroy and Kazen, McClain,
9 Satterley & Greenwood.

10 Your Honor, as Mr. Gordon said, with the changes that
11 the debtor has agreed to make, my clients consent to the entry
12 of the temporary restraining order requested today. We
13 recognize the case is very new. This is the third business day
14 of the case. There isn't a committee in place yet. There has
15 been no discovery provided yet by the debtors and my clients
16 and many of the other claimant representatives are still coming
17 up to speed on the case.

18 But we did want to make clear to the Court today that
19 although we're not objecting to the interim relief that is
20 sought here, until a committee is in place and can address
21 this, this fully we are concerned about many of the things that
22 Mr. Gordon has represented to the Court today and is contained
23 in the preliminary filings made by the debtor.

24 As reflected in the first day pleadings and in
25 Mr. Gordon's remarks, this case has been carefully planned from

1 the specific manner in which Georgia-Pacific was taken to
2 Texas, reordered, sent, part of it sent back here, part of it
3 sent back to Delaware, to the selection of this forum for the
4 bankruptcy case, to the indemnification and funding agreements
5 between New GP and the debtor. All of that suggests that a
6 great deal of thought and legal strategy has gone into the way
7 that this case has been filed and my clients are concerned
8 about the path that this case has taken.

9 THE COURT: Uh-huh (indicating an affirmative
10 response).

11 MS. RAMSEY: 105 injunctions are standard in asbestos
12 cases to extend the stay and provide the debtor with an
13 opportunity to reach a consensual deal, but this case presents
14 very unique facts and we think they are facts that require
15 exploration and we expect that what the Court may find coming
16 down the road, either in connection with this adversary or in
17 some other pleadings before the Court, are challenges to the
18 corporate restructuring that have taken place and we wanted to
19 make sure that the Court was aware today that the consent and
20 the silence that you're hearing with respect to the TRO was not
21 an indication that people are comfortable with the way that
22 this case has been planned and proceeded and filed.

23 THE COURT: Okay.

24 MS. RAMSEY: Thank you, Your Honor.

25 THE COURT: Uh-huh (indicating an affirmative

1 response). And duly noted.

2 Having said that, though, you've reviewed the order
3 that's been proposed by Mr. Gordon with the blacklined changes
4 and are okay with that or --

5 MS. RAMSEY: I, I have not seen the order, Your Honor.
6 I have discussed it with Mr. Prieto and we went through the
7 changes.

8 THE COURT: Okay.

9 MS. RAMSEY: I'll take a quick look now. There
10 weren't --

11 Mr. GORDON: Your Honor, may I approach?

12 THE COURT: Yes, sir. Thank you.

13 (Pause)

14 MS. RAMSEY: Yes, Your Honor. This reflects the
15 changes we agreed to.

16 THE COURT: Okay. All right.

17 Then, again, having granted the motion, Mr. Gordon,
18 we'll look for you to upload the order with those proposed
19 changes.

20 MR. GORDON: Would you like a clean version before I
21 leave or --

22 THE COURT: No, sir.

23 MR. GORDON: Okay.

24 THE COURT: Thank you.

25 MR. GORDON: Got lots of extras.

1 THE COURT: And I think that does leave us, then, with
2 the debtor's motion for approval of service procedures for
3 summons and complaint.

4 MR. GORDON: Could we have a second, Your Honor?

5 THE COURT: Yes, sir.

6 We can take a brief recess, actually.

7 MR. GORDON: Okay.

8 THE COURT: And we will be right back.

9 (Recess from 3:49 p.m., until 3:55 p.m.)

10 AFTER RECESS

11 MR. GORDON: Your Honor, you caught me by surprise on
12 that. My apologies.

13 THE COURT: That's all right.

14 MR. GORDON: I know one of the people to my left is
15 responsible for that gaffe and we'll -- we'll -- we'll track,
16 we'll track that down later.

17 So, Your Honor, this is just a straightforward motion.

18 THE COURT: Right.

19 MR. GORDON: We, we've done this, I think, in every
20 case and I think the plaintiffs' bar prefers this. We're just
21 asking you to approve it. We can send this, you know, we can
22 serve just the counsel as opposed to the plaintiffs themselves
23 and then counsel will take, take care of that.

24 THE COURT: I --

25 MR. GORDON: But it's pretty straightforward.

1 THE COURT: I figured that's what you'd say, but I
2 thought you might want to argue the motion.

3 And I will grant the debtor's motion in the adversary
4 as well for approval of service procedures for the summons and
5 complaint.

6 And I do think that that addresses all of the matters
7 that are on today's calendar. Unless, Mr. Gordon -- I think
8 Mr. Ellman sort of forecast, perhaps, there might be a need or
9 a request for other hearing dates. And so I'll hear from you
10 in that regard.

11 MR. ELLMAN: Your Honor, I think that we do have three
12 other, I believe it's three other motions pending --

13 THE COURT: Uh-huh (indicating an affirmative
14 response).

15 MR. ELLMAN: -- that are, again what I would call
16 second day motions, filed on the first day but to be heard on a
17 subsequent hearing day.

18 And so we would like to get a, a date on the calendar
19 for those motions. It could be December 5th, which is the date
20 you mentioned. I don't know that I have the time of day of
21 that hearing on the, on the 5th of December.

22 THE COURT: 9, that would be 9:30.

23 MR. ELLMAN: 9:30. We could use that date.

24 You also mentioned November 15th, but that may be, may
25 make more sense to wait until after the committee is in place

1 for these three motions.

2 So if it makes sense to Your Honor, I think we could
3 use December 5th as the -- we could notice those three motions
4 for that date.

5 THE COURT: Okay.

6 MR. ELLMAN: It's not an omnibus date, but it, it
7 makes sense to me to get those motions heard.

8 THE COURT: I agree.

9 Unless I hear objection, strenuous objection by
10 somebody right now, I will go ahead and set aside December 5th
11 for hearings in this case, okay?

12 MR. ELLMAN: Thank you.

13 THE COURT: All right. I believe that that takes care
14 of the matters that we have on the calendar for today and we
15 will look to see you back, some of you, all of you -- I don't
16 know -- a week from -- well, I guess it would be November 15th,
17 at 9:30.

18 So safe travels to all of you.

19 With that, we will recess. Thank you.

20 (Proceedings concluded at 3:58 p.m.)

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CERTIFICATE

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ Janice Russell

November 10, 2017

Janice Russell, Transcriber

Date